

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-281-E**

Shorthorn Solar, LLC; Rollins Solar, LLC;)
 Juniper Solar, LLC; Meslam Solar, LLC;)
 Culpepper Solar, LLC; Ashley Solar, LLC;)
 Jefferson Solar, LLC; Madison Solar, LLC;)
 Fairfield Solar, LLC; Bell Solar, LLC;)
 Webster Solar, LLC; B&K Solar, LLC;)
 GEB Solar, LLC; Ross Solar, LLC;)
 Summerton Solar Farm, LLC;)
 Clarendon Solar Farm, LLC;)
 Azalea Solar LLC; Cardinal Solar LLC;)
 Sunflower Solar, LLC; Cosmos Solar, LLC;)
 Zinnia Solar, LLC; Chester PV1, LLC;)
 Ninety-Six PV1, LLC; Newberry PV1, LLC;)
 Bradley PV1, LLC; Jonesville PV1, LLC;)
 Ft. Lawn PV1, LLC; and)
 Mt. Croghan PV1, LLC,)
)
 Complainants/Petitioners,)
)
 v.)
)
 Duke Energy Carolinas, LLC and Duke)
 Energy Progress, LLC,)
)
 Defendants/Respondents.)
)

**DUKE ENERGY CAROLINAS, LLC
AND DUKE ENERGY PROGRESS,
LLC’S MOTION TO COMPEL**

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, “Duke Energy” or the “Companies”), by and through their legal counsel, pursuant to Rule 103-819 of rules of practice and procedure of the Public Service Commission of South Carolina (“Commission”), 26 S.C. Code Ann. Regs. 103-819, and South Carolina Rules of Civil Procedure (“S.C.R.C.P.”) Rule 37, move the Commission for an order compelling Complainants¹

¹ For ease of reference, Duke Energy will refer to the individual complainants noted in the caption above collectively as “Complainants” as no individual complainant has provided a response to Duke Energy’s First Requests for Production of Documents.

to respond to Duke Energy's First Request for Production of Documents as more fully outlined below.

I. INTRODUCTION

Duke Energy's ability to develop its case and to defend itself against Complainants' allegations has been unjustly impeded by Complainants' outright refusal to substantively respond to a single discovery request propounded by Duke Energy. Complainants' reliance on meaningless and nonsensical objections is precisely the sort of evasive discovery tactic courts have condemned repeatedly as counter to the purposes of discovery. As such, Duke Energy respectfully moves for an Order compelling Complainants to meaningfully and fully respond to Duke Energy's First Request for Production of Documents. In addition, Duke Energy requests expedited treatment of this matter to allow the Companies the necessary time to prepare its direct testimony which is due on November 22, 2017.

II. BACKGROUND

On August 31, 2017, the Complainants, 28 solar qualifying facility ("QF")² project limited liability companies ("Solar QF Project LLCs") owned by Southern Current, LLC, Adger Solar, LLC, National Renewable Energy Corporation, and Ecoplexus, Inc. (the "Solar Developers") filed a complaint against DEC and DEP, assigned as Docket No. 2017-281-E, alleging, *inter alia*, that Duke Energy's five-year term purchase power agreement ("PPA") policy violates the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824a-3 ("PURPA"). Compl. ¶ 29. Specifically, Complainants assert that Duke Energy's offer to purchase the output of Complainants' proposed solar generation projects over five-year terms does not allow

² The Solar QF Project LLCs assert in the Complaint that they are certified as QFs under PURPA (Compl. ¶ 2), but the Companies are without sufficient information to verify this claim for all of the Complainants.

Complainants a reasonable opportunity to obtain capital from potential investors. Compl. ¶ 15, 28.

As directed by the Commission, on October 16, 2017, Duke Energy answered the Complaint, responding that DEC and DEP have fully satisfied their obligations under PURPA, Federal Energy Regulatory Commission (“FERC”) regulations and precedent, and South Carolina law and precedent, and have acted in good faith, by offering to purchase the output of the Complainants’ proposed solar generation projects—in aggregate, more than 1,150 megawatts (“MW”) of new solar capacity—at rates calculated based upon the Companies’ fixed forecasted avoided capacity and energy costs over five year terms.

On September 29, 2017, Duke Energy propounded twenty-four discovery requests to Complainants (“Set 1 Requests”). The Set 1 Requests generally sought information and documents related to the Complainants/Solar Developers’ corporate ownership, as well as the development, financing, and acquisition of recently-operational power generation facilities (“Facilities”), including securities and tax equity offerings to investors, solicitation of loans, as well as the return on investment required by the Solar Developers’ investors and the profits achieved by the Solar Developers in developing now-operational Facilities. *See generally* Exhibit A, Duke Energy’s First Request for Production of Documents to Complainants³. On October 18, 2017, Complainants served their Responses/Objections to Duke Energy’s Set 1 Requests, wherein Complainants failed to either respond or object to seven of the twenty-four requests and objected to the remaining seventeen without providing any substantive responses. *See* Exhibit B, Complainants’ Responses/Objections.⁴ As required by Rule 11 S.C.R.C.P., counsel for Duke

³ Exhibit A is the set of discovery requests served on the Adger Solar Project. Identical sets of discovery requests were served on the other three groups of projects, Ecoplexus, Narenco and Southern Current.

⁴ Exhibit B is the response of the Adger Solar Projects. Identical responses were submitted by the Ecoplexus, Narenco and Southern Current groups.

Energy consulted with counsel for Complainants before filing this motion. Although Complainants' counsel offered some indication that Complainants would reconsider their objections, because of time constraints, Duke Energy determined that this motion to compel should be filed immediately. Duke Energy will continue to work with the Complainants to resolve any issues that can be resolved and will inform the Commission of any progress. Duke Energy now moves the Commission for an order compelling Complainants' to meaningfully and fully respond to all of the Set 1 Requests.

III. ARGUMENT

The Commission's Regulations contemplate that parties will engage in discovery, and comply with their discovery obligations, as is similarly expected by state and federal courts. *See, e.g.,* 26 S.C. Code Ann. Regs. 103-832 through -835. Where the Commission's Regulations do not address a particular discovery-related matter, the S.C.R.C.P. govern. *See* 26 S.C. Code Ann. Regs. 103-835. S.C.R.C.P. Rule 37 permits discovering parties to move for an order compelling discovery responses when the party upon which discovery was propounded fails to answer or respond. S.C.R.C.P. 37(a)(2). Evasive and incomplete answers constitute a failure to answer under the Rules and, therefore, are properly the subject of a motion to compel. *See* S.C.R.C.P. 37(a)(4). Here, Complainants have provided evasive and incomplete answers in the form of baseless objections, which warrant an order compelling proper responses.

A. **Complainants' Objection Based on the Form of Duke Energy's Discovery Request Is Without Merit.**

Complainants assert a general objection to Duke Energy's designation of its Set 1 Requests as a request for production of documents. *See Exhibit B* at 1. In particular, Complainants argue:

The format of Defendants/Respondents' discovery requests not being denominated clearly, as being an 'Interrogatory' or a 'Request for Production,' makes it extremely difficult for the

Complainants/Petitions to accurately answer the discovery requests. The inability to discern the nature of Defendants/Respondents' discovery request hampers accurate responses.

See id. at 2. As an initial matter, Duke Energy's Set 1 Requests conform to the requirements of Commission Regulation 103-833, as there is neither a requirement in the Commission's regulations that the document must be styled or formatted a particular way, nor a prohibition against combining interrogatories and requests for production of documents, particularly, where it is more effective and efficient to do so. Duke Energy also fails to comprehend how the Companies' styling of the Set 1 Requests as requests for production of documents "hampers accurate responses" or makes it "extremely difficult for the Complainants/Petitions to accurately answer the discovery requests." The Set 1 Request clearly set forth the type of information or materials Duke Energy seeks through the use of detailed instructions and definitions, to which Complainants did not object. Moreover, Duke Energy cannot comprehend Complainants' justification and reliance on the styling of the Set 1 Requests as excusing their absolute failure to meaningfully and substantively answer the Set 1 Requests. Complainants' evasive conduct is contrary to the discovery rules in this forum and cannot credibly be based upon concerns of providing "accurate responses," where rather than provide clarified responses, Complainants simply elected to provide no information or material at all. Under these circumstances, the Commission should overrule Complainants' objections and direct Complainants to meaningfully and fully respond to all Set 1 Requests.

B. Complainants' Objections on the Grounds of Relevance Are Baseless.

Complainants responded to the requests numbered ("Request Nos.") 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 16, 18, 19, and 21 using limited and repetitive variations of the following boilerplate objection:

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because there is no reasonable geographic or time limiter included.

Contrary to Complainants' assertion, the information and materials sought in the above-identified Set 1 Requests are undoubtedly relevant to the subject matter of the Complaint filed by the Solar Developers against Duke Energy.

The Commission applies a broad scope of discovery, such that "[a]ny material relevant to the subject matter involved in the pending proceeding may be discovered unless the material is privileged or is hearing preparation working papers prepared for the pending proceeding." 26 S.C. Code Ann. Regs. 103-833(A). Acknowledging that the Commission Regulations' defined scope of discovery is similar to the scope of discovery under the Federal Rules of Civil Procedure,⁵ the Commission has recognized that relevant material encompasses "'any matter that bears on, or that could reasonably lead to other matters that bear on, any issue that is or may be in the case.'" *In re: State Universal Service Support of Basic Local Service Included in a Bundled Service Offering or Contract Offering*, Docket No. 2009-326-C, 2009 S.C. PUC LEXIS 427, at *3 (2009) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380 (1978)). This is because "'discovery itself is designed to help define and clarify the issues.'" *Id.* Given its broad scope, courts have admonished responding parties against using objections to circumvent their responsibility to respond. *See Curtis v. Time Warner Entertainment-Advance/Newhouse*

⁵ Prior to the amendments to the Federal Rules of Civil Procedure effective December 1, 2015, Rule 26 provided that "[f]or good cause, the court may order discovery of *any matter relevant to the subject matter involved in the action*. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1) (emphasis added). This language was removed from the amended version of the Federal Rules. The comparable language defining the scope of discovery in the Commission Regulations, however, did not change. Thus, Commission decisions relying on pre-2015 Rule 26 language remains instructive.

Partnership, No. 3:12-cv-2370-JFA, 2013 WL 2099496 (D.S.C. May 14, 2013) (outlining rules that apply to discovery objections) (unpublished copy attached hereto as Exhibit C).

Request Nos. 1 and 2 simply ask Complainants to identify and describe the Solar Developers' ownership structure, including ownership of the Solar Developers' potential Affiliates that own the Solar QF Project LLCs or existing Facilities. Duke Energy is entitled to know the ownership structure and identity of the 28 distinct Solar QF Project LLC entities alleging that it violated PURPA. Such information is clearly within the scope of discovery.

Request No. 6 sought information and documents about all Facilities with an operations date after January 1, 2014, either owned directly or indirectly by the Solar Developers or in which the Solar Developers have made an investment or provided a loan. Complainants were specifically asked to provide information about the project financing and structure for each Facility (*see* Request No. 6(a)(iii)); the tax investors, lenders, and holders of Complainants' securities that invested in each Facility (*see* Request No. 6(a)(iv)-(vii)); acquisition of each Facility (*see* Request No. 6(b)); the financial performance of each Facility (*see* Request No. 6(c)); and any loan agreements, sales contracts, operating agreements, and leases (*see* Request No. 6(h)). Request No. 6 also sought information about other subsidies received from the federal government or any state, county or city that supported development of the Facilities (*see* Request No. 6(a)(viii)). Request Nos. 7, 8, and 11 inquire about securities that Complainants have sold or offered to sell. Request Nos. 9 and 10 pertain to Complainants' efforts to obtain a tax investor or lender. Request Nos. 12 and 13 inquire about loans acquired by Complainants. Requests Nos. 18, 19, and 21 request documents concerning Complainants' profits, projected rates of return, and required returns on equity.

Each of these requests are indisputably relevant to Complainants' core allegation that Duke Energy's PPAs offered to the Solar Developers do not allow Complainants a reasonable opportunity to obtain capital for the construction of the Solar QF Project LLCs. Complainants' position is that but for Duke Energy's PPA term offered under PURPA, Complainants would have been able to secure the desired financing. Compl. ¶ 15. Complainants' finances are therefore at the center of the allegations against Duke Energy. Duke Energy has reasonably propounded discovery requests focused on the various aspects of Complainants' financial resources that any prudent and competent investor would consider when contemplating financing Complainants' Solar QF Project LLCs. Through filing the Complaint, the Solar Developers have unquestionably made the details of their finances relevant to the subject matter of the instant proceeding and Complainants should be ordered to respond.⁶

Perhaps most egregious is that Complainants provided the same relevance objection to Request No. 16, which asked Complainants' to identify anyone that has indicated that a term or condition of an energy sales contract for one of the Solar Developer's Facilities was not "financeable." Not only does this request relate directly to the core issue raised by Complainants, but the information sought could lead to the discovery of a witness whose testimony would be material to Duke Energy's testimony and inform the Companies' potential arguments and defenses. Complainants' attempt to avoid responding to this question results in great prejudice to Duke Energy and should not be sustained by the Commission.

⁶ Duke Energy notes that the Companies would be amenable to entering into a reasonable non-disclosure agreement with the Solar Developers to assure protection of any commercially sensitive information from public disclosure.

C. Complainants Objections on the Grounds of Geographic or Time Limiters Are Without Merit.

In response to certain of the requests discussed in section III.B, *supra*, Complainants also objected on the basis that the requests were not sufficiently tailored in terms of geography or time. In particular, Complainants take issue with the fact that the relevant time period for the requested information and materials (*i.e.*, from January 1, 2014 to present) “exceeds three years.” Looking back to Complainants’ introductory objections, Complainants suggest that the Set 1 Requests “do not . . . contain a time limiter exceeding three years, the Statute of Limitations period under South Carolina [sic].” Complainants fail to provide any explanation or legal support for the proposition that the applicable statute of limitations for a complaint under PURPA is three years. Complainants’ reliance on the purported statute of limitations as a basis for restricting the scope of Duke Energy’s discovery is misguided at best.

Even if an applicable statute of limitations existed in this case, it would not support Complainants’ objection to providing information outside of that time period. As the Commission has recognized, the scope of discovery reaches “any matter that bears on, or that could reasonably lead to other matters that bear on, any issue that is or may be in the case.” 2009 S.C. PUC LEXIS 427, at *3. Accordingly, the time period within which Complainants must bring their action does not in any way circumscribe the temporal scope of information and evidence subject to discovery in this proceeding.

Asserting general objections on the basis of time and geographic scope without providing any discovery related to the undisputed timeframe or geographic location is also improper and disfavored in South Carolina. *Curtis*, 2013 WL 2099496, at *2 (“If there is an objection based upon an unduly broad scope such as time frame or geographic location, discovery should be provided as to those matters within the scope which are not disputed.”). Complainant has failed

to provide any discovery whatsoever despite its implied concession that providing responses based on a relevant time period of three years is appropriate. Accordingly, Complainant should be required to respond.

D. Complainants' Objections on the Grounds of Privilege Are Baseless.

Complainants objected to Request Nos. 22 and 23 on the basis of privilege:

22. Provide all Documents which You have provided to any experts, whether or not retained by You as an expert witness, in connection with the issues raised and substance of Your Complaint.

RESPONSE: Complainants/Petitioners object to this Request, to the extent that this Request refers to privileged, or attorney/work documents.

23. Provide all Documents prepared by any experts, whether or not retained by You as an expert witness, with respect to the issues raised and substance of the Complaint.

RESPONSE: Complainants/Petitioners object to this Request, to the extent that this Request refers to privileged, or attorney/work documents.

Complainants' objection to these requests do not comport with South Carolina's privilege jurisprudence. "Privileged matter in South Carolina is matter that is not intended to be introduced into evidence and/or testified to in Court." *S.C. State Hwy. Dep't v. Booker*, 260 S.C. 245, 254, 195 S.E.2d 615, 620 (1973). On that basis, the state Supreme Court in *Booker* held that appraisal reports prepared by expert appraisers retained by the State Highway Department and their opinions were discoverable. *Id.* at 259; accord *American Fidelity Assur. Co. v. Boyer*, 225 F.R.D. 520, 521–22 (D.S.C. 2004) (granting the defendants' motion to compel the production of documents, records, and notes of the plaintiff's retained experts related to the case, including correspondence and information provided by the plaintiff's counsel). Documents provided to Complainants' experts on which Complainants' experts will rely in preparing their expert opinions or testimony

and any matters that will be the subject of their expert opinions or testimony are likewise discoverable. Complainants should be required to respond accordingly. Moreover, generalized objections asserting the protections of the attorney-client privilege or the work product doctrine also fail to comport with the rules of civil procedure. *E.g.*, *Curtis*, 2013 WL 2099496, at *3.

E. Complainants Have Waived Any Objection to Request Nos. 3, 4, 5, 14, 15, 17, and 20.

Complainants failed to provide any response whatsoever to Requests Nos. 3, 4, 5, 14, 15, 17, and 20 of the Set 1 Requests. By failing to respond at all, Complainants not only missed their discovery deadline, pursuant to the Scheduling Order, but also have waived any objection to these requests. *See Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) (“It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection.”)(citation omitted); *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989) (“[A]s a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived.”). Because Complainants did not object to Request Nos. 3, 4, 5, 14, 15, 17, and 20 within the twenty days allowed for response to Duke Energy’s Set 1 Requests, Complainants have waived any objection to those requests and should be compelled to respond fully and produce all responsive documents within one day of the ruling on this Motion.

IV. CONCLUSION

For all the foregoing reasons, Duke Energy respectfully moves the Commission for an order compelling Complainants to properly respond to Duke Energy’s First Request for Production of Documents. Further, Duke Energy requests expedited treatment of this matter to allow Duke Energy the necessary time to prepare testimony which is due on November 22, 2017.

Dated this 26th day of October, 2017.

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EXHIBIT A

**DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO THE ADGER SOLAR PROJECTS**

ELECTRONICALLY FILED - 2017 September 25: PM/PA/SGS/PS/DO/CL/16/29 DO-28-24-EP අනුලේඛ 0෦෦෪7

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC by and through their legal counsel, pursuant to Rule 103-833(C) of the Rules of Practice and Procedure of the South Carolina Public Service Commission, hereby submit this first request for production of documents to the following entities: Summerton Solar Farm, LLC and Clarendon Solar Farm, LLC (collectively “Adger Solar Projects”) of whom Adger Solar, LLC is the corporate parent. Please forward to the undersigned on or before October 18, 2017, your responses to the following requests:

INSTRUCTIONS

10. Where a Request calls for an answer in more than one part, answer each part separately so that Your answer is clearly understandable.

11. Your obligation to produce Documents is not limited to Documents in Your physical possession. You must also produce all Documents that You have the right or ability to obtain on demand.

12. If any Document requested was at one time in existence, but is either no longer in existence or has been lost, state for each such Document: (1) the type of Document; (2) the subject matter of the Document; (3) the date upon which the Document ceased to exist or was lost; (4) the circumstances under which the Document ceased to exist or was lost; (5) the identity of all Persons having knowledge of the circumstances under which the Document ceased to exist or was lost; and (6) the identity of all persons having knowledge of the contents of said Document.

13. If You are asserting the attorney-client privilege, work product doctrine, or any other privilege or basis as the justification for Your failure to produce any Document or respond to any Request, describe the factual basis for Your claim of privilege, including: (1) the nature of the Document or information, including a summary statement of the subject matter in sufficient detail to permit a determination regarding the validity of Your claim of privilege; (2) the identity of the sender(s) of the Document; (3) the identity of the author(s) of the Document; (4) the identity of the recipient(s) of the Document; (5) the job title of each person named in subparts (2) – (4) above; (6) the recipients of each copy and the names appearing on any circulation list; (7) the date or approximate date of the Document; (8) the name of each Person to whom the original or any copy was circulated; and (9); an explanation of the basis for assertion of the privilege or protection of the Document.

14. Physically or electronically segregate Documents produced in response to a particular Request from Documents produced in response to any other particular Request, and identify the Request to which they are responsive. If a Document is responsive to more than one particular Request, specify each Request to which such Document is responsive.

15. In producing Documents pursuant to a Request, please mark the documents with the specific data request number pursuant to which the Documents are being produced and mark each page of each Document produced with a Bates number.

16. All Documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (“.pdf”) format. Spreadsheets should be provided in their native form.

17. These Requests are continuing in nature, such that You must provide a supplemental response if and when You discover, obtain, or recollect other or further information responsive to any Request. In addition, You must amend the answer to any Request if and when You discover or ascertain that the answer was incorrect.

18. Please provide responses to the following data requests electronically. To the extent this is impracticable, the responses, including any responsive Documents, should be provided at the offices of Sowell, Gray, Robinson, Stepp & Laffitte, LLC, 1310 Gadsden Street, Columbia, South Carolina 29201, or some mutually convenient location otherwise agreed to by the parties.

DEFINITIONS

1. **“Affiliate”** means “affiliate” as defined by Rule 501(b) of Regulation D of the Securities and Exchange Commission and, with respect to any particular Facility, also any joint venturer or other partner.
2. **“Buyer”** means a purchaser under a Sales Contract.
3. **“Commission”** means the Public Service Commission of South Carolina.
4. **“Communication”** means the transmittal of information in the form of facts, ideas, Documents, inquiries, or otherwise, including every discussion, conversation, conference, or telephone call.
5. **“Complaint”** means the Complaint filed by You in the Dockets on August 31, 2017.
6. **“Concerning”** means relating to, referring to, describing, evidencing, or constituting.
7. **“DEP”** means Duke Energy Progress, LLC.
8. **“DEC”** means Duke Energy Carolinas, LLC.
9. **“Docket”** means Commission Docket No. 2017-281-E.
10. **“Documents”** or **“Document”** means any and all writings, drawings, graphs, charts, photographs, memoranda, letters, facsimiles, telexes, correspondence, e-mail, memoranda, notes, work, papers, reports, invoices, receipts, estimates, ledgers, books of account, checks, check stubs, minutes or records of meetings or conferences, summaries of negotiations, directives, interviews, transcripts, notations of conversations, telephone calls or meetings, calendars, appointments books, diaries, journals, agenda, computer or other business machine entries, including the original and all non-identical copies and drafts and every document known

enhancement or interest rate, currency, weather, or RECs Concerning the development, construction, or operation of a Facility; or (d) the purchase of a Facility.

19. **“Offered PURPA Terms”** means the terms and conditions, specifically including a five-year tenor, Communicated to Petitioners in response to Petitioner’s request to sell the output of certain of the Project LLCs’ Facilities to DEC and DEP under PURPA.

20. **“Operations Date”** means the first date upon which a Facility delivers electricity to any Person, including an RTO or ISO.

21. **“Person”** means any natural person or any business, legal, or governmental entity or association.

22. **“Petitioner” or “Petitioners”** means the Adger Solar Projects which includes the following entities: Summerton Solar Farm, LLC and Clarendon Solar Farm, LLC of whom Adger Solar, LLC is the corporate parent.

23. **“Project LLCs”** means “the Petitioners as identified above.

24. **“PURPA”** means the Public Utility Regulatory Policies Act of 1978.

25. **“RECs”** means any and all renewable energy certificates, renewable energy credits, credits, benefits, emissions reductions, emission reduction credits, Carbon credits, offsets, and allowances, howsoever entitled, attributable to the generation of energy by a Facility, the use of such energy, and/or such energy’s displacement of conventional energy generation, including any and all renewable or environmental characteristics and benefits of the energy generated by a Facility, including without limitation any certifications issued by a renewable generation information system of a regional transmission organization, independent system operator, or of any North American Electric Reliability Corporation regional entity, or certified or certifiable by the Center for Resource Solutions.

DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC'S
FIRST DATA REQUEST

1. Identify all of Your Affiliates, including YieldCos.
2. Describe Your ownership structure and the ownership structure of Your Affiliates.
3. Please explain the meaning of the word “financing” as used by You in the Complaint filed in this Docket.
4. Please explain the meaning of the word “financeable” as used by You in the Complaint filed in this Docket.
5. Please explain the meaning of the word “refused” or “refusal” as used by You in paragraphs 13 and 14 of the Complaint filed in this Docket, and provide any Documents related to the alleged refusal identified in the Complaint.
6. Identify all Facilities with an Operations Date on or after January 1, 2014, (i) that You or any of Your Affiliates directly or indirectly own or have owned, (ii) in which You or any of Your Affiliates own or have owned Securities, (iii) to which You or any of Your Affiliates provide or have provided a Loan, or (iv) in which You or any of Your Affiliates have or had a Tax Investment.
 - a. For each such Facility:
 - i. Provide the Operations Date.
 - ii. Provide the date of Site Control.
 - iii. Describe the Facility’s project financing and structure, including all sources and destinations of money.
 - iv. Describe all Tax Benefits and Tax Investment Agreements.
 - v. Identify all Tax Investors.

indirectly owning the Facility, including any Documents provided to any Investor, Lender, or Tax Investor, and any developed solely for internal use by You or any Affiliate of You.

- d. For each such Facility, describe:
 - i. all actual and all expected or projected cash flows to the Facility and any Person directly or indirectly owning the Facility on account of anything Concerning the Facility.
 - ii. all money Concerning Tax Benefits or Tax Investment Agreements that has been received or is expected to be received by any Person.
- e. For each such Facility, describe Loan terms and whether the Lender has recourse to sources of repayment other than the Loan collateral.
- f. For each such Facility, describe if there has been a transaction Concerning such Facility with a YieldCo, including any current or deferred sale to a YieldCo of Securities in an entity with an ownership interest in the Facility.
- g. For each such Facility, provide a copy of all Internal Revenue Service Private Letter Rulings.
- h. For each such Facility, provide any and all (i) existing, (ii) in effect, (iii) not in effect, (iv) prior, or (v) terminated:
 - i. Sales Contracts.
 - ii. agreements Concerning any Loan.
 - iii. limited liability company operating agreements.
 - iv. agreements Concerning any partnership.
 - v. agreements Concerning any joint venture.

- c. Provide all Documents Concerning all such Communication.
10. List all Persons to whom You or any of Your Affiliates have, on or after January 1, 2014, asked to be a Lender Concerning any Facility.
- a. Identify all of the foregoing Persons that Communicated to You that such Person would not be a Lender because of any term or condition of a Sales Contract Concerning the Facility.
 - b. Provide all Documents Concerning all such Communications.
11. Provide copies of all Documents by which You or any of Your Affiliates have, on or after January 1, 2014, sold or offered to sell Securities, including prospectuses, investor presentations, and pro forma financial projections.
12. List all Persons from whom You or any of Your Affiliates have, on after January 1, 2014, received any money or extension of credit pursuant to a Loan.
13. Describe the repayment and amortization provisions of all Loans to You and Your Affiliates.
14. Explain why Loans to You or Your Affiliates must have a repayment or amortization term that exceeds the Offered PURPA Terms.
15. Explain why You do not have available financial resources to construct and operate Facilities and must obtain Loans from Persons who are not Your or Your Affiliates to construct and operate Facilities.
16. Identify all Persons that have told You that a term or condition of a Sales Contract Concerning a Facility is not “financeable” or cannot obtaining “financing.”
- a. Provide all Documents Concerning all such Communications.

b. Which elements of DEC's and DEP's proposal You oppose and why you oppose them.

Dated this 29th day of September, 2017.

Heather Shirley Smith, Deputy General Counsel
Rebecca J. Dulin, Senior Counsel
Duke Energy Carolinas, LLC
40 West Broad St, Suite 690
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Telephone 864.370.5045
heather.smith@duke-energy.com
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and

[Signature]

Frank R. Ellerbe, III (SC Bar No. 01866)
SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
fellerbe@sowellgray.com
Attorneys for Duke Energy Carolinas, LLC
Duke Energy Progress, LLC

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-281-E**

CERTIFICATE OF SERVICE

Shorthorn Solar, LLC; Rollins Solar, LLC;)
 Juniper Solar, LLC; Meslam Solar, LLC;)
 Culpepper Solar, LLC; Ashley Solar, LLC;)
 Jefferson Solar, LLC; Madison Solar, LLC;)
 Fairfield Solar, LLC; Bell Solar, LLC;)
 Webster Solar, LLC; B&K Solar, LLC;)
 GEB Solar, LLC; Ross Solar, LLC;)
 Summerton Solar Farm, LLC;)
 Clarendon Solar Farm, LLC;)
 Azalea Solar LLC; Cardinal Solar LLC;)
 Sunflower Solar, LLC; Cosmos Solar, LLC;)
 Zinnia Solar, LLC; Chester PV1, LLC;)
 Ninety-Six PV1, LLC; Newberry PV1, LLC;)
 Bradley PV1, LLC; Jonesville PV1, LLC;)
 Ft. Lawn PV1, LLC; and)
 Mt. Croghan PV1, LLC,)
)
 Complainants/Petitioners,)
)
 v.)
)
 Duke Energy Carolinas, LLC and Duke)
 Energy Progress, LLC,)
)
 Defendants/Respondents.)
)

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Sowell Gray Robinson Stepp & Laffitte, LLC, have this day caused to be served upon the person(s) named below **Duke Energy Carolina, LLC and Duke Energy Progress, LLC's First Request for Production of Documents to The Southern Current Projects, First Request for Production of Documents to The Adger Solar Projects, First Request for Production of Documents to The NARENCO Projects and First Request for Production of Documents to The Ecoplexus Projects** in the foregoing matter via electronic mail and hand delivery as indicated below:

Richard L. Whitt, Counsel
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, SC 29201
rlwhitt@austinrogerspa.com

Jon C. Hawkins

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-281-E**

Shorthorn Solar, LLC; Rollins Solar, LLC;)
Juniper Solar, LLC; Meslam Solar, LLC;)
Culpepper Solar, LLC; Ashley Solar, LLC;)
Jefferson Solar, LLC; Madison Solar, LLC;)
Fairfield Solar, LLC; Bell Solar, LLC;)
Webster Solar, LLC; B&K Solar, LLC;)
GEB Solar, LLC; Ross Solar, LLC;)
Summerton Solar Farm, LLC;)
Clarendon Solar Farm, LLC;)
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Bradley PV1, LLC; Jonesville PV1, LLC;)
Ft. Lawn PV1, LLC; and)
Mt. Croghan PV1, LLC,)
)
Complainants/Petitioners,)
)
v.)
)
Duke Energy Carolinas, LLC and Duke)
Energy Progress, LLC,)
)
Defendants/Respondents.)
)

EXHIBIT B

**RESPONSES/OBJECTIONS TO
DUKE ENERGY CAROLINAS, LLC AND DUKE ENERGY PROGRESS, LLC'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO THE ADGER SOLAR PROJECTS**

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2017-281-E**

IN RE: Shorthorn Solar, LLC; Rollins Solar, LLC;)
 Juniper Solar, LLC; Meslam Solar, LLC;)
 Culpepper Solar, LLC; Ashley Solar, LLC;)
 Jefferson Solar, LLC; Madison Solar, LLC;)
 Fairfield Solar, LLC; Bell Solar, LLC;)
 Webster Solar, LLC; B&K Solar, LLC;)
 GEB Solar, LLC; Ross Solar, LLC;)
 Summerton Solar Farm, LLC;)
 Clarendon Solar Farm, LLC;)
 Azalea Solar LLC; Cardinal Solar LLC;)
 Sunflower Solar LLC; Cosmos Solar LLC;)
 Zinnia Solar LLC; Chester PV1, LLC;)
 Ninety-Six PV1, LLC; Newberry PV1, LLC;)
 Bradley PV1, LLC; Jonesville PV1, LLC;)
 Ft. Lawn PV1, LLC; and)
 Mt. Croghan PV1, LLC,)
)
 Complainants/Petitioners,)
)
 v.)
)
 Duke Energy Carolinas, LLC and)
 Duke Energy Progress, LLC,)
)
 Defendants/Respondents.)

**RESPONSES/OBJECTIONS
TO DUKE ENERGY CAROLINAS,
LLC AND DUKE ENERGY
PROGRESS, LLC'S
FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS*
TO
THE ADGER SOLAR PROJECTS**

RESPONSE/OBJECTIONS

*Complainants/Petitioners **object** to the form of Defendants/Respondents' discovery request of September 29, 2017. Specifically, Defendants/Respondents denominated its discovery **only** as, "First Request for Production of Documents". However, Complainants/Petitioners **object** because, it appears that Defendants/Respondents' discovery request includes, (i) "Request for Production of Documents", (ii) "Data Requests" and (iii) Interrogatories, ("data requests" are not listed under this Commission's Regulations R. 103-833). Complainants/Petitioners further note that the Certificate of Service utilized by Defendants/Respondents only designates the service of, "First Request for Production of Documents". Complainants/Petitioners **further object** that the following discovery requests are compound, including both possible Interrogatories and both possible Requests for Production, Request "5", Request "6", Request "8", Request "9", Request "10", Request "16" and Request "17". The Complainants/Petitioners **further object** that the requests of the Defendants/Respondents either (i) contain no time limiter (ii) or contain a time limiter exceeding three years, the Statute of Limitations period under South Carolina Law and (iii) do not contain a reasonable geographic limiter.

The format of Defendants/Respondents' discovery requests not being denominated clearly, as being an "Interrogatory" or a "Request for Production", makes it extremely difficult for the Complainants/Petitioners to accurately answer the discovery requests. The inability to discern the nature of Defendants/Respondents' discovery requests hampers accurate responses. For a specific example of a problem with Defendants/Respondents' discovery requests, Request, "6(b)(i)(2)", refers to "7(b)(i)(2)", which provision is not included in this discovery request.

Complainants/Petitioners **further object** to the following Requests from Defendants/Respondents of September 29, 2017, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding, and/or do not contain a geographic or time limiter, or contain a time limiter exceeding three years, the Statute of Limitations period under South Carolina.

(The order of the numeration is from Defendants/Respondents' document and subparts of their Requests are included in the objections.)

1. Identity all of Your Affiliates, including YieldCos.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because there is no reasonable geographic or time limiter included.

2. Describe Your ownership structure and the ownership structure of Your Affiliates.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because there is no reasonable geographic or time limiter included.

6. Identify all Facilities with an Operations Date on or after January 1, 2014, (i) that You or any of Your Affiliates directly or indirectly own or have owned, (ii) in which You or any of Your Affiliates own or have owned Securities, (iii) to which You or any of Your Affiliates provide or have provided a Loan, or (iv) in which You or any of Your Affiliates have or had a Tax Investment.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because the time period shown, exceeds three years and Complainants/Petitioners also object because there is no geographic limiter. Complainants/Petitioners also object to ambiguous terms included in the subparts of this Request.

7. List all Securities that You or any of Your Affiliates have, on or after January 1, 2014, sold or offered to sell to any Person.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because the time period shown, exceeds three years and Complainants/Petitioners also object because there is no geographic limiter.

8. List all Persons to whom You or any of Your Affiliates have, on or after January 1, 2014, sold or offered to sell any Securities.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because the time period shown, exceeds three years and Complainants/Petitioners also object because there is no geographic limiter.

9. List all Persons to whom You or any of Your Affiliates have, on or after January 1, 2014, asked to be a Tax Investor Concerning any Facility.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because the time period shown, exceeds three years and Complainants/Petitioners also object because there is no geographic limiter.

10. List all Persons to whom You or any of Your Affiliates have, on or after January 1, 2014, asked to be a Lender Concerning any Facility.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because the time period shown, exceeds three years and Complainants/Petitioners also object because there is no geographic limiter.

11. Provide copies of all Documents by which You or any of Your Affiliates have, on or after January 1, 2014, sold or offered to sell Securities, including prospectuses, investor presentations, and pro forma financial projections.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because the time period shown, exceeds three years and Complainants/Petitioners also object because there is no geographic limiter.

12. List all Persons from whom You or any of Your Affiliates have, on after January 1, 2014, received any money or extension of credit pursuant to a Loan.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because the time period shown, exceeds three years and Complainants/Petitioners also object because there is no geographic limiter.

13. Describe the repayment and amortization provisions of all Loans to You and Your Affiliates.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because there is no reasonable geographic or time limiter included.

16. Identify all Persons that have told You that a term or condition of a Sales Contract Concerning a Facility is not "financeable" or cannot obtaining "financing."

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because there is no reasonable geographic or time limiter included.

18. Provide all Documents Concerning projections of, or reporting of, margins, profits, rate of return, internal rate of return, or return on equity of or for money provided to You or any of Your Affiliates, including any Documents provided to any Investor, Lender, or Tax Investor, and any developed solely for internal use by You or any Affiliate of You.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because there is no reasonable geographic or time limiter included.

19. Provide all Documents Concerning margins, profits, rates of return, or return on equity made, earned, or otherwise obtained by You or any of Your Affiliates Concerning any Facility.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because there is no reasonable geographic or time limiter included.

21. Provide all Documents concerning all profit and loss statements, accounting documents, balance sheets, and audit reports concerning the income or loss or profitability of You for 2014, 2015, and 2016 or year-to-date 2017.

RESPONSE: Complainants/Petitioners object to this Request, as not identifying, describing or requesting material relevant to the subject matter involved in this pending proceeding and Complainants/Petitioners also object because the time period shown, exceeds three years.

22. Provide all Documents which You have provided to any experts, whether or not retained by You as an expert witness, in connection with the issues raised and substance of Your Complaint.

RESPONSE: Complainants/Petitioners object to this Request, to the extent that this Request refers to privileged, or attorney/work documents.

23. Provide all Documents prepared by any experts, whether or not retained by You as an expert witness, with respect to the issues raised and substance of the Complaint.

RESPONSE: Complainants/Petitioners object to this Request, to the extent that this Request refers to privileged, or attorney/work documents.

24. With respect to DEC's and DEP's Offered PURPA Terms, please explain:

RESPONSE:

Subpart (a): Complainants/Petitioners object to this Request, on the grounds that the terms, “elements”, “proposal” and “support” are vague and ambiguous.

Subpart (b): Complainants/Petitioners object to this Request, on the grounds that the terms, “elements”, “proposal” and “oppose” are vague and ambiguous.

[Signature Page Follows]

/S/

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508 Hampton Street, Suite 300
Columbia, South Carolina 29201
(803) 251-7442
Attorney for Southern Current LLC; Adger
Solar, LLC; NARENCO, Ecoplexus, Inc., and
the Complainants.

October 18, 2017
Columbia, South Carolina

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-281-E**

Shorthorn Solar, LLC; Rollins Solar, LLC;)
Juniper Solar, LLC; Meslam Solar, LLC;)
Culpepper Solar, LLC; Ashley Solar, LLC;)
Jefferson Solar, LLC; Madison Solar, LLC;)
Fairfield Solar, LLC; Bell Solar, LLC;)
Webster Solar, LLC; B&K Solar, LLC;)
GEB Solar, LLC; Ross Solar, LLC;)
Summerton Solar Farm, LLC;)
Clarendon Solar Farm, LLC;)
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Bradley PV1, LLC; Jonesville PV1, LLC;)
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Mt. Croghan PV1, LLC,)
)
Complainants/Petitioners,)
)
v.)
)
Duke Energy Carolinas, LLC and Duke)
Energy Progress, LLC,)
)
Defendants/Respondents.)
)

EXHIBIT C

***CURTIS, ET AL. V. TIME WARNER ENTERTAINMENT-
ADVANCE NEWHOUSE PARTNERSHIP***

2013 WL 2099496

Only the Westlaw citation is currently available.

United States District Court,
D. South Carolina.Keith CURTIS and Tyneshia Brooks,
individually and on behalf of all
others similarly situated, Plaintiffs,

v.

TIME WARNER ENTERTAINMENT-ADVANCE/
NEWHOUSE PARTNERSHIP, Defendant.

C/A No. 3:12-cv-2370-JFA.

|

May 14, 2013.

Attorneys and Law Firms

Graham Lee Newman, Michael David Scott, Richard A. Harpootlian, Christopher P. Kenney, Richard A. Harpootlian Law Office, Columbia, SC, James Mixon Griffin, Margaret Nicole Fox, Lewis Babcock and Griffin, Columbia, SC, Todd R. Ellis, Todd Ellis Law Office, Irmo, SC, for Plaintiffs.

Joseph Scott Carr, Joseph E. Ozmer, II, Michael D. Kabat, Paul G. Sherman, Wargo and French, Atlanta, GA, Ronald James Tryon, Lawrence Michael Hershon, Parker Poe Adams and Bernstein, Columbia, SC, for Defendant.

ORDER ON MOTIONS TO COMPEL

JOSEPH F. ANDERSON, JR., District Judge.

*1 This matter is before the court upon two motions to compel discovery¹ filed by the plaintiffs. *See* ECF Nos. 39, 60. The court heard argument on the first motion on April 15, 2013, the same day the court heard argument from the parties on the plaintiffs' motion for conditional class certification. The second motion to compel was not fully briefed at the time of that hearing, although full briefs have now been received by the court. The court has determined that oral argument on the second motion will not aid in its decision process.

Before delving into the merits of the motions to compel, the court must address two procedural issues. As to

the first motion, defendant contends that the motion is defective because plaintiffs have not complied with the requirements of Local Rule 7.02, D.S.C., which requires a moving party to first confer with the opposing party about the subject of its motion before filing the motion. The court has examined the affidavit and emails attached to the plaintiffs' reply memorandum and determines that the meet and confer requirements of Local Rule 7.02 have been met. Although there was no "meet and confer" session denominated as such, it is clear that the plaintiffs explored various options and alternatives prior to filing their motion and complied with Local Rule 7.02 in this case.

Next, plaintiffs challenge the fact that the defendant has renumbered some of its interrogatories so as to break out subparts and assign them separate numbers. Plaintiffs' concern in this regard is obviously occasioned by Rule 33, FED. R. CIV. P., which limits a party's interrogatories to no more than twenty-five, unless the court excuses this limitation. This issue may be easily resolved by the court's announcing its intention to exercise its discretion under Rule 33 to relax the limitation on the number of interrogatories a party may make. Because the court has gained some familiarity with the complexity of this litigation at the hearing on the motion for conditional class certification, the court hereby announces that each party will be allowed to propound a total of 100 interrogatories, including all discrete subparts, to the other side in this case. Neither party should attempt to circumvent the clear import of this rule by including subparts to an interrogatory that should count as a numbered interrogatory.

Turning to the merits, in their first motion, plaintiffs point out that the defendant's initial and supplemental responses violate the Federal Rules of Civil Procedure because they raise "generalized, boilerplate objections and fail to identify the information withheld pursuant to an objection or claim of privilege." ECF No. 40, at 4. Defendant then compounds the problem by also providing plaintiffs with *some* response, thus leaving plaintiffs unable to determine what information has been withheld and the specific justification for the withholding. In their second motion, plaintiffs point out that the defendant has employed the same basic tactics in responding to the discovery requests in subsequent interrogatories and requests for production.

*2 Rather than engage in a point-by-point discussion of each bit of information the plaintiffs seek, the court wishes to memorialize, by way of this order, its general philosophy on discovery responses and then provide the defendant an opportunity to submit new answers to all outstanding discovery. The court hastens to add that, by disposing of the motion in this fashion, the court is not at this time determining that the defendant has acted in bad faith or otherwise acted improperly under the Federal Rules of Civil Procedure or the Local Rules of this District. Rather, the defendant has responded to discovery requests in a fashion that is becoming all too common in cases on this court's docket, and the action taken on the present motions is consistent with what this court has directed in other cases.

In order to efficiently resolve discovery disputes, the parties are hereby notified that the following rules apply to discovery objections before this court:

1. *Nonspecific, Boilerplate Objections*

The parties shall not make nonspecific, boilerplate objections. Objections that state that the discovery request is “vague, overly broad, or unduly burdensome” are, standing alone, meaningless and will be found meritless by this court. A party objecting on these grounds must explain the specific and particular way in which a given request is vague, overly broad, or unduly burdensome. See [Fed.R.Civ.P. 33\(b\)\(4\)](#); [Josephs v. Harris Corp.](#), 677 F.2d 985, 992 (3d Cir.1982) (“[T]he mere statement by a party that the interrogatory was ‘overly broad, burdensome, oppressive and irrelevant’ is not adequate to voice a successful objection to an interrogatory. On the contrary, the party resisting discovery ‘must show specifically how ... each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive.’ ” (citation omitted)). If a party believes that the request is vague, that party shall attempt to obtain clarification prior to objecting on this ground.

2. *Objections Based Upon Scope*

If there is an objection based upon an unduly broad scope, such as time frame or geographic location, discovery should be provided as to those matters within the scope which are not disputed. For example, if discovery is sought nationwide for a ten-year period, and the responding party objects on the ground that only a five-year period limited to activities in the State of South Carolina is appropriate,

the responding party shall provide responsive discovery falling within the five-year period as to the State of South Carolina and then object to the overage.

3. *Irrelevant and Not Reasonably Calculated to Lead to Admissible Evidence*

An objection that a discovery request is irrelevant and not reasonably calculated to lead to admissible evidence must include a specific explanation describing why the request lacks relevance and why the information sought will not reasonably lead to admissible evidence. Parties are reminded that the federal rules allow for broad discovery that does not necessarily need to be admissible at trial. See [Fed.R.Civ.P. 26\(b\)\(1\)](#); [Oppenheimer Fund, Inc. v. Sanders](#), 437 U.S. 340, 351–52, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978).

4. *Formulaic Objections Followed by an Answer*

*3 The parties shall not recite a formulaic objection followed by an answer to the request. It has become common practice for a party to object on the basis of any of the above reasons and then state that, “notwithstanding the above,” the party will respond to the discovery request, subject to or without waiving such objection. Such an objection and answer preserves nothing and serves only to waste the time and resources of both the parties and the court. Further, such practice leaves the requesting party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered. See [Civil Discovery Standards](#), 2004 A.B.A. SEC. LIT. 18.

5. *Objections Based upon Privilege*

Generalized objections asserting the protection of the attorney-client privilege or the work product doctrine also do not comply with the Federal Rules of Civil Procedure. A party objecting on the grounds of privilege must state the specific nature of the privilege being asserted, as well as, *inter alia*, the nature and subject matter of the communication at issue and the sender and receiver of the communication and their relationship to each other. If a general objection of privilege is made without attaching a proper privilege log, the objection of privilege may be deemed waived.

With the foregoing principles in mind, the defendant is directed to submit new responses to outstanding discovery

requests. If any disputes arise to the new responses, the parties must comply with the meet and confer requirements of Local Rule 7.02 prior to filing any such motion, and they should earnestly attempt to resolve discovery disputes prior to court involvement if at all possible.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2013 WL 2099496

Footnotes

- 1** The first motion additionally seeks sanctions.

End of Document

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